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Bebhinn Donnelly-lazarov
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A PHILOSOPHY OF CRIMINAL ATTEMPTS

An investigation of criminal attempts unearths some of the most fundamental, intriguing and perplexing questions about criminal law and its place in human action. When does attempting begin? What is the relationship between attempting and intending? Do we always attempt the possible and, if so, possible to whom? Does attempting involve action and does action involve attempting? Is my attempt fixed by me or can another perspective reveal what it is? How 'much' action is needed for an attempt, how 'much' intention is needed and can these matters be decided categorically?

Bebhinn Donnelly-Lazarov's answers to these questions will interest criminal law theorists, philosophers and lawyers or law reformers, who encounter the mixed practical and philosophical phenomenon of attempting. Inspired by G. E. M. Anscombe's philosophy, Part I examines attempting generally and its relationship with intention, action, subjectivity and possibility. From the conclusions reached, Part II proposes a specific theory of criminal attempts.

BEBHINN DONNELLY-LAZAROV is a professor in law at Swansea University.

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For my parents

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PREFACE

Something, in life, will fascinate us. We should be surprised if our fascinations, however prosaic, are not in some way connected to important aspects of human flourishing. Even an interest in how paint dries is so connected; consider the walls that might survive a dearth of imagination! Of course we are fortunate if our interests fit within an established academic discipline, supported by a collegiate body of similarly curious beings. The writer has benefited from such good fortune. Colleagues at Swansea University have provided moral support and encouragement, including Professors Tettenborn, Soyer, Beale, Thompson, Patterson and Snell. I am particularly grateful for the sabbatical awarded by the College of Law, providing a dedicated period of time to complete this project. Others have assisted in developing and refining the arguments. Professor Dennis Patterson has read a great deal of the text and his insights have always resulted in significant improvements. Dr David Prendergast has given advice on this and earlier work on attempts and consistently his observations have been relevant and incisive. I am grateful to Professor Andrew Halpin and to seminar attendees at Swansea University who enabled my initial thoughts on attempting to mature and to the Irish Jurisprudence Society for facilitating a workshop on the first two chapters of this book.

Two chapters of the text are based, loosely, on published work: 'Possibility, Impossibility and Extraordinariness in Attempts' (2010) 23 *Canadian Journal of Law and Jurisprudence* 1 47–70 (Chapter 6); and 'Sentencing and Consequences a Divergence between Blameworthiness and Liability for Punishment' (2007) 10 *New Criminal Law Review* 3 392–414 (Chapter 7). The looseness reflects changing commitments, largely about the concept of intention and largely due to the influence of the unparalleled writing of Elizabeth Anscombe. Still, the conclusions reached in these published pieces have not been affected by the change in perspective. I thank the publishers for the relevant permissions and Professor Richard Bronaugh, particularly, for the advice and editorial

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assistance he gave in his role as editor of the *Canadian Journal of Law and Jurisprudence*. Considerable thanks are due also to Finola O'Sullivan and Richard Woodham from Cambridge University Press who were always available to assist, and whose patience I much appreciate.

I am grateful to my family for tolerating the long periods of time I spent 'watching paint dry', and to my mother for encouraging grammatical improvement. Above all I thank Vergil, Caitlín and Maggie for love and inspiration.

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